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In the Matter of)	
)	File No: EB-10-MA-0048
Whisler Fleurinor)	NAL/Acct. No: 201132600002
)	FRN: 0020655106
Fort Lauderdale, Florida)	
)	
)	

Released: March 4, 2011

I. INTRODUCTION

II. BACKGROUND

3. On August 24, 2010, the agents inspected the unlicensed station. Mr. Fleurinor showed the agents his antenna and transmitter, admitted that the equipment was his, and then turned off the transmitter. Prior to leaving the property, the agents issued an on-scene Notice of Unlicensed Operation (“*NOUO*”) to Mr. Fleurinor, which he signed acknowledging that he was in receipt of the *NOUO*. The *NOUO* warned that operation of an unlicensed station violated the Act and the Rules and could result in further enforcement action.³

² Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 $\mu\text{V/m}$ at three meters. 47 C.F.R. § 15.239.

³ We note that this is the second *NOUO* issued by the Miami Office to Mr. Fleurinor for operation of an unlicensed (continued....)

4. Finally, on August 31, 2010, agents from the Miami Office again used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 99.5 MHz to Mr. Fleurinor's commercial property in Fort Lauderdale, Florida. Once again, the agents determined that these signals exceeded the limits for operation under Part 15 of the Rules and therefore required a license. A review of Commission records showed that no authorization was issued to Mr. Fleurinor, or to anyone for any operation of an FM broadcast station on this frequency, at or near this address.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

6. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.⁶ On March 16, August 24, and August 31, 2010, the agents determined that Mr. Fleurinor operated an unlicensed radio station on 99.5 MHz from his commercial property in Fort Lauderdale, Florida. A review of the Commission's records revealed that Mr. Fleurinor did not have a license to operate a radio station on 99.5 MHz in Fort Lauderdale, Florida. Because Mr. Fleurinor consciously operated the station, we find that the apparent violation was willful. In addition, because Mr. Fleurinor's unlicensed operation occurred on more than one day, we find that the apparent violation was repeated. Based on the evidence before us, we find that on March 16, August 24 and August 31, 2010, Mr. Fleurinor apparently willfully and repeatedly violated

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FM broadcast station. The *First NOUO*, issued on January 14, 2008, involved Mr. Fleurinor's unlicensed operation of a radio station on the frequency 97.7 MHz from the same commercial property in Fort Lauderdale, Florida. See *Whisler Fleurinor*, Notice of Unlicensed Operation (Enf. Bur., Miami Office, rel. Jan. 14, 2008) ("*First NOUO*"). The Miami Office received a return receipt for the *First NOUO* signed by Mr. Fleurinor and a response to the *First NOUO* signed by Mr. Fleurinor's attorney. See Letter from Rocco G. Marucci, P.A. to Stephanie Dabkowski, Resident Agent, Miami Office dated January 22, 2008. In the response, Mr. Fleurinor's attorney stated that "Mr. Fleurinor had no intention of violating any federal or state laws with respect to any radio transmissions from his business. He has advised that he will have the equipment checked to insure that it complies with the FCC levels and does not violate any laws or regulations."

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 47 U.S.C. § 301.

section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Consequently, the \$10,000 base forfeiture amount is subject to adjustment. On two separate occasions – January 14, 2008 and August 24, 2010 – Mr. Fleurinor was issued a *NOUO* explaining that unlicensed operation of a radio station violated the Act and could subject him to further enforcement action, including a substantial monetary forfeiture. Despite having acknowledged receipt of both *NOUOs*, Mr. Fleurinor continued to operate an unlicensed radio station on 99.5 MHz from his commercial property in Fort Lauderdale, Florida. The fact that Mr. Fleurinor continued to operate with full knowledge that such activity violated the Act and the Rules demonstrates a deliberate disregard for the Commission's requirements. Thus, we find that an upward adjustment in the forfeiture amount is warranted.⁹ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Fleurinor is apparently liable for a forfeiture in the amount of \$20,000.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314, and 1.80 of the Commission's Rules, Whisler Fleurinor is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violation of section 301 of the Act.¹⁰

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Whisler Fleurinor **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See 47 C.F.R. § 1.80(b)(4). See also *Nounoune Lubin*, 25 FCC Rcd 12654 (Enf. Bur. 2010).

¹⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹¹ For questions about payment, contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Whisler Fleurinor shall also send an email notification to SCR-Response@fcc.gov on the date said payment is made.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, PO Box 520617, Miami, FL 33152, and must include the NAL/Acct. No. referenced in the caption. The written shall also be emailed to SCR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Whisler Fleurinor at his address of record and to his counsel, Rocco G. Marucci, 633 Southeast 3rd Avenue, Suite 302, Fort Lauderdale, 33301.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

¹¹ See 47 C.F.R. § 1.1914.